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10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

11 UNLIMITED CIVIL ACTION

12 ANDREA CUKOR, CHRISTOPHER
13 CUKOR, and ALEXANDER CUKOR,

No.

14 Plaintiffs,

15 vs.

COMPLAINT FOR WRONGFUL DEATH,
PERSONAL INJURY, EMOTIONAL
DISTRESS DAMAGES (Unlimited
Jurisdiction)

16 CITY OF BERKELEY, DOES ONE through
17 FIFTY, inclusive,

18 Defendants.
19 _____/

20 Plaintiffs ANDREA CUKOR, CHRISTOPHER CUKOR, and ALEXANDER CUKOR
21 hereby allege as follows:

22 IDENTIFICATION OF PARTIES AND BASIS FOR VENUE

23 1. Defendant, CITY OF BERKELEY, is a municipal corporation located in Alameda
24 County, California. The Berkeley Police Department and Public Safety Communications Center are
25 CITY OF BERKELEY agencies and departments operated by the CITY OF BERKELEY.
26

2. The true names and capacities of those defendants sued in this complaint as DOES

1 ONE through FIFTY are unknown to plaintiffs. Plaintiffs sue these defendants by fictitious names,
2 under §474 of the California Code of Civil Procedure. Plaintiffs are informed and believe, and
3 thereon allege, that each of these fictitiously-named defendants is legally responsible for the events
4 described in this complaint and legally caused the injuries and damages suffered by plaintiffs.
5 Plaintiffs pray leave to amend this complaint when the true names and capacities of the fictitiously-
6 named defendants have been ascertained.

8 3. Plaintiffs are informed and believe that, at all relevant times, each defendant, including
9 defendants identified by fictitious names, was the duly authorized agent, servant and/or employee
10 of every other defendant with respect to the actions and events described in this complaint, acting
11 or omitting to act within the course and scope of such agency, service and/or employment, and
12 pursuant to the consent, permission, authorization, instruction, direction, and/or ratification of each
13 and every other defendant, and further that, each and every defendant, as aforesaid, when acting as
14 a principal, was negligent in the selection, hiring, and/or supervision of each and every other
15 defendant as an agent, servant, employee and/or independent contractor.

17 4. On or about June 19, 2012, a claim on behalf of plaintiffs was duly presented to the
18 CITY OF BERKELEY ("CITY"). On or about August 6, 2012, CITY gave notice of denial of the
19 claim.
20

21 5. This complaint arises from events occurring on February 18, 2012, when, in the
22 immediate presence and in full view of ANDREA CUKOR, Peter Cukor was killed by an intruder
23 at the Cukors' home in Berkeley, California.

24 6. Plaintiffs seek damages arising from the death of Peter Cukor, and damages for the
25 severe emotional distress suffered by ANDREA CUKOR in the contemporaneous perception of the
26 fatal attack on her husband. Plaintiffs were harmed by grossly negligent misrepresentations and

1 affirmative misconduct by CITY OF BERKELEY emergency communications officials.

2 7. Plaintiff ANDREA CUKOR is the surviving spouse of Peter Cukor. At all relevant
3 times, ANDREA CUKOR relied upon the society, companionship, comfort, emotional and financial
4 support provided by Peter Cukor. Plaintiffs CHRISTOPHER CUKOR and ALEXANDER CUKOR
5 are the surviving adult children of Peter Cukor. At all relevant times, plaintiffs CHRISTOPHER
6 CUKOR and ALEXANDER CUKOR relied upon the society, companionship, comfort and
7 emotional support provided by Peter Cukor. Plaintiffs are the sole surviving heirs at law of Peter
8 Cukor, and as such are entitled to make a claim for the wrongful death of decedent pursuant to the
9 provisions of Code of Civil Procedure, §377.60.
10

11 **FACTS GIVING RISE TO PLAINTIFFS' CLAIMS**

12 8. Andrea Cukor resided with Peter Cukor in a home on Park Gate Road in the CITY OF
13 BERKELEY.
14

15 9. On February 18, 2012, shortly before 8:45 p.m., Peter and Andrea Cukor saw a
16 suspicious trespasser, later identified as Daniel DeWitt, on their premises. Peter Cukor encountered
17 DeWitt inside the garage attached to their home. DeWitt announced that this was his home, that he
18 was there to see someone named "Zoey," and that a psychic had told him he would find Zoey there.
19 The Cukors had never seen DeWitt before, and there was no person named "Zoey" at their home.
20 Peter Cukor told DeWitt to leave. DeWitt walked out of the garage. Peter Cukor went inside, and
21 described the encounter with DeWitt to Andrea Cukor.
22

23 10. Andrea and Peter Cukor then observed DeWitt open the gate leading to their front yard,
24 walk through the yard and approach the front entrance to the house. Peter Cukor told DeWitt to
25 leave, and DeWitt mumbled that he lived there and insisted again that he was going to come inside
26 the house.

1 11. Andrea Cukor and Peter Cukor were greatly distressed by these encounters with
2 DeWitt. DeWitt was a very large man, was bizarre, incoherent, and persistent. Andrea Cukor and
3 Peter Cukor feared that DeWitt presented an immediate threat to their safety. They sought
4 emergency assistance from the CITY Police Department's emergency communications center.
5

6 12. The CITY represents that its emergency communications center provides timely and
7 efficient services in a positive and professional manner, and recognizes that maintaining public
8 safety requires prompt, accurate and effective communications. The Berkeley Police Department
9 provided printed information to CITY residents, and explained in its website that its direct
10 emergency number for immediate threats to life and property was 510-981-5911. The CITY
11 encouraged all residents to program their telephones with this number.
12

13 13. On February 8, 2012 at approximately 8:45 p.m., Peter Cukor called this emergency
14 number to report an intruder at his home, and described an immediate threat to life and property.
15 He provided DOE ONE and DOE TWO and the emergency communications official who answered
16 his call with a clear and unambiguous description of the intruder and a detailed account of the actions
17 by the intruder. He explained that the intruder was approximately 6 feet, 4 inches tall, that he acted
18 very strangely, was incoherent, and demanded entry to the Cukors' house. Peter Cukor emphatically
19 and firmly requested DOE ONE and DOE TWO and CITY emergency communications officials to
20 have an officer sent to the Cukors' home right away.
21

22 14. DOE ONE, DOE TWO and CITY emergency communications officials affirmatively
23 and positively asserted to Peter Cukor that a police officer would be sent to the Cukors' home soon
24 and ended the call. Peter Cukor told Andrea Cukor that the CITY was sending a police officer to
25 the house right away.
26

 15. Peter Cukor and Andrea Cukor reasonably relied on this affirmative and positive

1 assertion of DOE ONE, DOE TWO and the CITY emergency communications officials and
2 maintained the reasonable belief that a Berkeley Police officer would arrive at their home within a
3 few minutes of Peter Cukor's emergency telephone call.

4
5 16. DOE ONE, DOE TWO and the CITY's emergency communications officials made the
6 positive and affirmative representation that an officer would be sent to the Cukor home "soon" with
7 gross negligence and in bad faith. At all relevant times DOE ONE, DOE TWO and the CITY
8 emergency communications officials failed to exercise care to ascertain the truth of the information
9 communicated to Peter Cukor and failed to exercise care in the manner of communicating
10 information to Peter Cukor. At all relevant times, DOE ONE and DOE TWO and the CITY
11 emergency communications officials did not plan nor intend to direct an officer to the Cukors' home.
12 At all relevant times DOE ONE and DOE TWO and the CITY emergency communications officials
13 had actual knowledge that no officer would be dispatched and that no officer would respond to the
14 Cukors' potentially life-threatening emergency. DOE ONE and DOE TWO and the CITY's
15 emergency communications officials had no reasonable basis to believe that an officer would
16 respond to the Cukors' home. At all relevant times, it was reasonably foreseeable that persons
17 calling the police department's emergency communications center to report an intruder trying to
18 enter their home will rely upon the accuracy of the information provided by CITY emergency
19 communications officials and will rely on the officials' assertion that an officer would be promptly
20 dispatched to their home.

21
22
23 17. At all relevant times, it was reasonably foreseeable to DOE ONE, DOE TWO and the
24 CITY's emergency communications officials that the presence of a mentally unstable intruder trying
25 to gain entrance to a private home presented an immediate threat to the caller's physical safety and
26 to the safety of other persons foreseeably present in the home.

1 18. In making affirmative representations to Peter Cukor that a police officer would
2 respond promptly to the Cukors' home, CITY emergency communications officials intended to
3 induce reliance on these assertions and had actual and/or constructive knowledge that Peter Cukor
4 and others foreseeably present in the home would rely on such affirmative representations for the
5 protection of their physical safety.
6

7 19. At all relevant times, Berkeley police officers were available and equipped to respond
8 to emergency calls.
9

10 20. At or about the time of Peter Cukor's urgent call to CITY emergency communications
11 officials, Berkeley Police officers obtained information that a citizen had requested immediate
12 assistance due to threats by an intruder at a home on Park Gate Road. Plaintiffs are informed and
13 believe, and, on that basis, allege that at least one Berkeley Police officer informed the CITY
14 emergency communications center that he was near the Cukors' address and was available to
15 respond to the request for emergency assistance. DOE ONE, DOE TWO and CITY emergency
16 communications officials, with gross negligence and in bad faith, specifically directed available
17 officers not to respond to the call.
18

19 21. At all relevant times, DOE ONE, DOE TWO and the CITY emergency communication
20 officials failed to exercise care to ascertain the accuracy of the information communicated to
21 Berkeley Police officers about the Cukors' emergency call. At all relevant times, the CITY
22 emergency communications officials failed to exercise care in the manner of communicating
23 information about the Cukors' emergency call to Berkeley Police officers.
24

25 22. Peter Cukor and Andrea Cukor did not know and had no reason to suspect that officers
26 would be directed not to respond to their call for emergency assistance. Peter Cukor and Andrea
Cukor reasonably relied on DOE ONE, DOE TWO and the CITY emergency communications

1 employees' affirmative assurance that an officer would be dispatched to their home on an emergent
2 basis, and expected an officer to arrive within minutes of Peter Cukor's emergency telephone call.

3 23. The affirmative misrepresentation that an officer would arrive promptly, the
4 affirmative misrepresentations about the Cukors' emergency to available police officers, and the
5 affirmative instructions directing available officers not to respond to the Cukors' home created risks
6 of harm and increased the pre-existing risks of harm to the Cukors.
7

8 24. As a direct and legal result of the explicit representation that a police officer would
9 arrive to protect them from the threats presented by the intruder and in full reliance thereon, Peter
10 Cukor and Andrea Cukor did not identify nor pursue any other means to protect themselves. They
11 did not contact any other persons to notify them about the intruder, nor leave the residence to get
12 away from the intruder. Had they known that no police officer would respond to their call, they
13 would have notified other persons about the intruder, and would have taken shelter in another
14 location. Reasonably relying on the misrepresentations of DOE ONE, DOE TWO and the CITY
15 emergency communications officials, Peter Cukor believed that a trained and armed professional
16 police officer was approaching his home and would arrive at any moment.
17

18 25. While they waited for a police officer to arrive, Peter Cukor and Andrea Cukor
19 watched to see if the intruder made further attempts to enter the house. They saw DeWitt go out the
20 front gate, walk down the driveway and away from their home.
21

22 26. When a police officer had not arrived after several more minutes, Peter Cukor and
23 Andrea Cukor were concerned that the officer was having trouble locating their home, because the
24 house and driveway are not clearly visible from the road. On a previous occasion when a police
25 officer had been dispatched to their address, the officer had been unable to locate the driveway
26 without assistance from Peter Cukor. Reasonably relying on the information he had received from

1 DOE ONE and DOE TWO and the CITY emergency communications officials, Peter Cukor went
2 outside with a flashlight to illuminate the driveway. Peter Cukor would not have gone outside if he
3 did not believe that a trained and armed professional police officer was approaching his home and
4 would arrive at any moment or was in the street near the home but needed assistance to find the
5 driveway.
6

7 27. When Peter Cukor was outside, reasonably expecting to meet and assist the
8 responding police officer, DeWitt reappeared in the driveway. DeWitt confronted Peter Cukor and
9 Peter Cukor attempted to escape back to the house, pursued by DeWitt.
10

11 28. Andrea Cukor was looking out of a window, fully expecting to see an officer arrive in
12 the driveway. She saw light from a flashlight coming up the drive and believed her husband was
13 approaching the house with an officer. However, while her attention was trained on the two men,
14 she saw that the second man was the intruder, and that he was attacking Peter Cukor. While she
15 watched and screamed at DeWitt, DeWitt pushed Peter Cukor to the ground, and struck him over
16 the head with a large object. Andrea Cukor saw and heard the blows struck by DeWitt against Peter
17 Cukor. The blows struck by DeWitt were fatal.
18

19 29. As a direct and legal result and reasonable reliance upon the false assurances provided
20 to Peter Cukor by DOE ONE, DOE TWO and the CITY's emergency communications officials, and
21 of the officials' misrepresentations and grossly negligent instructions to available officers, Peter
22 Cukor exposed himself to the risk of contact with the intruder when there was no one present to help
23 control the intruder. Peter Cukor did not intend to have further contact with the intruder without a
24 police officer present to assist him. Relying on the assurance of a timely, professional police
25 response, Peter Cukor exposed himself to the risk of attack, and was killed by Daniel DeWitt.
26 Plaintiffs have been deprived thereby of the society, comfort, companionship and moral and financial

1 support of Peter Cukor.

2 30. As a result of the false assurances provided to Peter Cukor by DOE ONE, DOE TWO
3 and the CITY's emergency communications officials, and as a result of the employees' improper and
4 grossly negligent instructions to available officers, plaintiff ANDREA CUKOR experienced severe
5 trauma when she contemporaneously saw and heard the murder of her husband by Daniel DeWitt,
6 and suffered extreme emotional distress.

7
8 31. Plaintiffs have sustained damages in excess of the jurisdictional requirements of this
9 court.

10 32. In responding to calls for emergency assistance reporting immediate threats to physical
11 safety, DOE ONE, DOE TWO and the CITY's emergency communications officials are subject to
12 a duty of care to provide accurate information. At all times when communicating with citizens in
13 a potentially life-threatening emergency, it is foreseeable that citizens will rely on the information
14 provided by emergency communications officials and will reasonably regard emergency
15 communications officials as possessing special knowledge about the availability of emergency
16 assistance. In responding to calls for emergency assistance in a potentially life-threatening
17 emergency, DOE ONE, DOE TWO and the CITY's emergency communications officials are subject
18 to a duty of care to ascertain the accuracy of information they provide and to communicate
19 information in an accurate and reliable manner.

20 33. DOE ONE, DOE TWO and the CITY's emergency communications officials are
21 subject to a duty to provide accurate and reliable information to police officers about calls for
22 emergency assistance and to communicate that information in an accurate and reliable manner to
23 police officers.

24 34. DOE ONE, DOE TWO and the CITY's emergency communications officials are

1 subject to a duty to exercise reasonable care to refrain from affirmative acts of misfeasance which
2 create or enhance the risk of harm to others.

3 35. In hiring, training, and supervising emergency communications officials for the CITY
4 OF BERKELEY, DOE ONE, DOE TWO and the CITY's emergency communications officials were
5 subject to a duty of care to ensure that emergency communications officials perform their duties free
6 from gross negligence, and to ensure that emergency communications officials receive, conduct,
7 prioritize, and respond to calls without affirmative misrepresentations or affirmative acts of
8 misfeasance.
9

10 **FIRST CAUSE OF ACTION**

11 **Wrongful Death**

12 36. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 35,
13 above, as though fully set forth in this cause of action.
14

15 **First Count - Negligent Misrepresentation to Peter Cukor**

16 37. Defendants CITY OF BERKELEY, DOES ONE through TWENTY-FIVE,
17 inclusive, were grossly negligent, and breached their duties of care in affirmatively and positively
18 asserting to Peter Cukor that a police officer would soon arrive at the Cukor home. Said
19 defendants acted in bad faith in assuring Peter Cukor that a police officer would arrive soon at
20 the Cukor home. Said defendants' misrepresentations induced Peter Cukor to believe that a
21 police officer was nearby, and available to assist him. In reliance on these misrepresentations,
22 Peter Cukor was exposed to the risk of physical harm.
23
24

25 38. The grossly negligent misrepresentations of said defendants, and each of them as
26 described in this complaint, caused the wrongful death of Peter Cukor and the damages suffered
by plaintiffs as a consequence of his wrongful death. Plaintiffs were deprived of the society,

1 comfort, companionship, and moral and financial support of Peter Cukor and incurred expenses
2 for the interment of Peter Cukor's remains.

3 39. The misrepresentations and gross negligent acts of defendants DOES ONE through
4 TWENTY-FIVE, inclusive, and each of them, as described in this complaint, were made within
5 the course and scope of their employment with the CITY OF BERKELEY.
6

7 WHEREFORE, plaintiffs pray for relief as set forth below.

8 **Second Count - Negligent Misrepresentations by Police Officers**

9 40. Defendants CITY OF BERKELEY, DOES ONE through TWENTY-FIVE, and
10 each of them, were grossly negligent, and breached their duties of care in communications with
11 police officers who were available to respond to the Cukors' request for emergency assistance.
12 With gross negligence, defendants failed to ascertain the accuracy of information communicated
13 to police officers and failed to communicate the information in a reasonable manner. Plaintiffs
14 are informed and believe, and, on that basis, allege that the CITY OF BERKELEY, DOES ONE
15 through TWENTY-FIVE, and each of them, with gross negligence, advised available police
16 officers that the Cukors' call did not involve immediate threats to their physical safety, and that
17 department policies and current operational constraints prohibited officers from responding to the
18 Cukors' call for emergency assistance.
19
20

21 41. The grossly negligent misrepresentations of defendants CITY OF BERKELEY,
22 DOES ONE through TWENTY-FIVE, and each of them as described in this complaint, caused
23 the wrongful death of Peter Cukor and the damages suffered by plaintiffs as a consequence of his
24 wrongful death. Plaintiffs were deprived of the society, comfort, companionship, and moral and
25 financial support of Peter Cukor and incurred expenses for the interment of Peter Cukor's
26 remains.

1 42. The misrepresentations and gross negligent acts of defendants DOES ONE through
2 TWENTY-FIVE, and each of them, as described in this complaint, were made within the course
3 and scope of their employment with the CITY OF BERKELEY.

4 WHEREFORE, plaintiffs pray for relief as set forth below.

5
6 **Third Count - Affirmative Acts of Misfeasance**

7 43. Defendants CITY OF BERKELEY, DOES ONE through TWENTY-FIVE,
8 inclusive, were grossly negligent, and breached their duties of care in directing available police
9 officers not to respond to the life-threatening emergency reported by Peter Cukor, after inducing
10 Peter Cukor to expect an officer to arrive soon. Said defendants acted in bad faith in
11 affirmatively discouraging available police officers from responding to the life-threatening
12 emergency reported by Peter Cukor, after inducing Peter Cukor to expect an officer to arrive
13 soon.

14
15 44. The grossly negligent acts of misfeasance by said defendants, as described in this
16 complaint, caused the wrongful death of Peter Cukor and the damages suffered by plaintiffs as a
17 consequence of his wrongful death. Plaintiffs were deprived of the society, comfort,
18 companionship, and moral and financial support of Peter Cukor and incurred expenses for the
19 interment of Peter Cukor's remains.

20
21 45. Defendants' ONE through TWENTY-FIVE, inclusive, affirmative acts of
22 misfeasance, as described in this complaint, were made within the course and scope of
23 defendants' employment with the CITY OF BERKELEY.

24 WHEREFORE, plaintiffs pray for relief as set forth below.

25
26 **Fourth Count - Negligent Training and Supervision of
Emergency Communications Employees**

46. Defendants, DOES TWENTY-SIX through FORTY-FIVE, inclusive, breached their duties of care in negligently hiring, training and supervising DOES ONE through TWENTY-FIVE. As a result of the negligence of DOES TWENTY-SIX through FORTY-FIVE, DOES ONE through TWENTY-FIVE made affirmative misrepresentations to Peter Cukor and actively discouraged available police officers from responding to the life-threatening emergency at the Cukor's home.

47. The negligence of DOES TWENTY-SIX through FORTY-FIVE, as described in this complaint, caused the wrongful death of Peter Cukor and the damages suffered by plaintiffs as a consequence of his wrongful death. Plaintiffs were deprived of the society, comfort, companionship, and moral and financial support of Peter Cukor and incurred expenses for the interment of Peter Cukor's remains.

48. The negligence of DOES TWENTY-SIX through FORTY-FIVE, as described in this complaint, was committed within the course and scope of their employment with the CITY OF BERKELEY.

WHEREFORE, plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION

Negligent Infliction of Emotional Distress

49. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 35 above as though fully set forth in this cause of action.

50. At all relevant times, defendants CITY OF BERKELEY, DOES ONE through TWENTY-FIVE, inclusive, owed a duty to ANDREA CUKOR to refrain from affirmative acts of misfeasance which created or increased a risk of physical and emotional harm to ANDREA CUKOR.

51. At all relevant times, said defendants owed a duty to ANDREA CUKOR to refrain from negligent misrepresentations which reasonably induced ANDREA CUKOR to rely on the CITY's provision of emergency police assistance to protect her and her husband from physical and emotional harm.

1 52. With gross negligence and in bad faith, said defendants breached their duties to
2 ANDREA CUKOR.

3 53. As a result of the negligent misfeasance, misrepresentations and gross negligence
4 of defendants, and each of them, ANDREA CUKOR contemporaneously saw and heard Daniel
5 DeWitt attack, strike and kill her husband, Peter Cukor, causing ANDREA CUKOR to suffer
6 extreme emotional distress and fear for her own physical safety.

7 54. ANDREA CUKOR incurred general damages and special damages as a result of
8 defendants' gross negligence.

9 55. DOES' ONE through TWENTY-FIVE, inclusive, negligent infliction of emotional
10 distress and gross negligent acts upon ANDREA CUKOR, as described in this complaint, were
11 committed within the course and scope of their employment with the CITY OF BERKELEY.

12 WHEREFORE, plaintiffs, and each of them, pray for relief against defendants, and each
13 of them, as follows:

14 For each plaintiff

15 1. For general damages for the wrongful death of Peter Cukor, in a sum which is greater
16 than the minimum jurisdiction of this court;

17 2. Funeral and burial expenses, according to proof;

18 For plaintiff Andrea Cukor

19 3. General damages for her personal injuries, emotional upset, distress and anguish
20 caused by witnessing the attack and the fatal injuries caused to Peter Cukor in a sum which is
21 greater than the minimum jurisdiction of this court;

22 4. All medical and incidental expenses, according to proof;

23 For each plaintiff

24 5. For prejudgment interest pursuant to Civil Code §3288;

25 6. For costs of suit; and

26 7. For such other and further relief as this Court may deem just and proper.

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DATED: November 15, 2012

VAN BLOIS & ASSOCIATES

By


R. LEWIS VAN BLOIS
Attorneys for Plaintiffs